**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 47 of 2016**

1. Sahin Bai Wd/o Late Shri Sudharu Nirmalkar, aged about 61 Years
2. Shivkumari Nirmalkar Wd/o Late Shri Santosh Nirmalkar, aged about 30 Years
3. Raju S/o Late Shri Santosh Nirmalkar, aged about 9 Years Minor- Through Mother Shivkumari Nirmalkar Wd/o Late Shri Santosh Nirmalkar, aged about- 30 Years
4. Amit S/o Late Shri Santosh Nirmalkar, aged about 6 years Minor- Through Mother Shivkumari Nirmalkar Wd/o Late Shri Santosh Nirmalkar, Aged About- 30 Years,

   All R/o Belgahna, Police Station- Belgahna, Tahsil- Kota, Distt.- Bilaspur, Chhattisgarh

**---Appellants/ claimants**

**VERSUS**

1. Santosh Baiswade S/o Shri Tulasiram Baiswade, R/o Gadhad, Police Station- Ratanpur, Distt.- Bilaspur, Chhattisgarh, Present Address- Belgahna, Police Station- Belgahna, Tahsil- Kota, Distt.- Bilaspur, Chhattisgarh **----Owner**
2. Reliance General Insurance Company Limited, Ravi Bhawan G Road, Raipur Chhattisgarh

**----Respondents**

---

| | | |
|---|---|---|
| For Appellants | : | Mr. Rishi Rahul Soni, Advocate |
| For Respondent 2 | : | Mr. Sourabh Sharma, Advocate |

---

(*Proceedings through Video Conferencing)*

**Hon'ble Shri Justice Parth Prateem Sahu**

**ORDER**

**31/08/2021**

1. Claimants/ appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) challenging the impugned award dated 09.10.2015 passed by First Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (henceforth “Claims Tribunal”) in claim case no. 88/12 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act

of 1988 awarded total sum of Rs. 5,50,000/- as compensation with interest @ 6% pa from the date of award till its realization, fastened liability upon non-applicant 2/ Insurance Company to satisfy the amount of compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 08.05.2011, Santosh Nirmalkar was travelling on Tata 207DI bearing registration no. CG10C1088 (henceforth “offending vehicle”) as helper. Driver of offending vehicle late Rajkumar drove the offending vehicle rashly and negligently due to which he lost control upon it and it turned turtle. In the said accident, Santosh Nirmalkar suffered grievous injuries. He was immediately taken to hospital where he succumbed to motor accidental injuries after 20 days of accident.

3. Appellants-claimants who are widow, minor children and mother of deceased filed an application under Section 166 of the Act seeking total compensation of Rs. 36,00,000/- pleading therein that on the date of accident deceased was working as helper and earning Rs. 9000/- per month. Rs. 6000/- towards salary and Rs. 100/- as daily allowance. Age of deceased on the date of accident was 26 years.

4. Non-applicant 1/ owner of offending vehicle even after service of notice did not appear before the Claims Tribunal and was proceeded ex parte.

5. Non-applicant 2 submitted reply to claim application pleading therein that driver of offending vehicle late Rajkumar was not possessed with valid and effective driving licence, as such, there was breach of policy conditions. Amount of compensation claimed is highly exaggerated.

6. On appreciation of pleadings and evidence brought on record by

respective parties, learned Claims Tribunal held that Santosh Nirmalkar died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by its driver. Breach of policy conditions was not found to be proved and awarded Rs. 5,50,000/- as total compensation.

7. Mr. Rishi Rahul Soni, learned counsel for appellants would submit that learned Claims Tribunal erred in assessing income of deceased as Rs. 3000/- only overlooking the nature of his occupation on the date of accident. Looking to the nature of occupation, age of deceased, learned Claims Tribunal ought to have assessed monthly income of deceased as Rs. 6000/-. He further contended that Claims Tribunal erred in not awarding any amount of compensation towards future prospects. Claims Tribunal awarded only Rs. 71,000/- towards other conventional heads which is much on lower side. In support of his contentions learned counsel for appellants places his reliance upon the judgment passed by Hon'ble Supreme Court in case of ***National Insurance Company Ltd. v. Pranay Sethi reported in (2017) 16 SCC 680*** and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others reported in (2018) 18 SCC 130***. Lastly it is submitted that the Tribunal erred in awarding interest from the date of award and not from the date of filing of claim application.

8. Mr. Sourabh Sharma, learned counsel for Respondent 2/ Insurance Company opposes the submissions made by learned counsel for appellants and submits that claimants expect pleadings and oral statement have not placed any evidence on record to prove income of deceased. Even the employer/ owner of offending vehicle was

not examined as witness to prove occupation and income of deceased, hence, Claims Tribunal justified in assessing income of deceased on notional basis. Compensation awarded is just and proper which does not call for any interference.

9. I have heard learned counsel for parties and also perused record of claim case.

10. In this appeal challenge is only to quantum of compensation awarded by Claims Tribunal. Appellants have raised the ground of assessing income of deceased to be on lower side, perusal of record of claim case would show that appellants in application have pleaded occupation of deceased to be helper on the offending vehicle. Income of deceased is pleaded as Rs. 6000/- per month as salary and Rs. 100/- as daily allowance. In support of pleadings of income, appellant 2 is examined as AW-1 who is widow of deceased. Appellants have not examined owner of offending vehicle to prove occupation of deceased and his income. In the aforementioned facts of the case, Claims Tribunal justified in not accepting the income pleaded and assessing income of deceased on notional basis. For assessing income on notional basis, several factors like age of deceased/ victim, date of accident, nature of occupation, wage structure, cost of living etc. are to be taken into consideration. On the date of accident, even an ordinary manual laborer could have earned more wages than what is assessed by Claims Tribunal. Keeping in mind the aforementioned factors and the occupation of deceased to be labourer, I find it appropriate to reckon income of the deceased as Rs. 4000/- per month instead of Rs. 3000/-. Award of compensation towards future prospects is

considered by Hon’ble Supreme Court in case of **Pranay Sethi (supra)**. Hon’ble Supreme Court in the aforementioned rulings held that where the deceased/ victim was less than 40 years of age and not in permanent employment, there will be addition of 40% of the established income towards future prospects. In the case at hand, deceased was 26 years of age, as such, there will be addition of 40% of established income to income of deceased for calculating total income. Award of compensation on other conventional heads has been considered by Hon’ble Supreme Court in **Pranay Sethi (supra)**. **H**eads on which compensation on other conventional heads is to be awarded is specified and further quantified the amount of compensation for each head. The heads are loss of consortium, loss of estate and funeral expenses. Hon’ble Supreme Court in case of **Nanu Ram (supra)** explained the types of loss of consortium and held it to be loss of spousal consortium, loss of parental consortium and loss of filial consortium. Appellants shall be entitled for the amount of compensation on other conventional heads as held by Hon’ble Supreme Court in aforementioned rulings.

11. Coming to the ground raised by learned counsel for appellant with regard to award of interest, Section 171 of the Act of 1988 envisages the award of interest which is as under.

> “171. Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

12. Provisions under the Act for award of interest prescribes from any date but not earlier than the date of making claim. As the Motor

Vehicles Act under which the claim is filed is a beneficial piece of legislation, hence, in the considered opinion of this Court interest on the amount of compensation is to be awarded from the date of filing of claim application and not from the date of award. The interest awarded by the Claims Tribunal from the date of passing of award is not sustainable and it is set aside and the interest to be awarded from the date of application.

13. For the foregoing reasons, I propose to recompute the amount of compensation to be awarded to appellants as under.

14. Income of deceased is assessed as Rs. 4000/- per month ie. Rs. 48000/- per annum. Upon adding 40% of established income in the income of deceased, total annual income of deceased will be Rs.67,200/-. After deducting 1/4$^{th}$ towards personal and living expenses of deceased annual loss of dependency of appellants will come to Rs.50,400/-. Upon applying multiplier of 17 to the annual loss of dependency, total loss of dependency will come to Rs. 8,56,800/- [Rs.50400x17]. Besides the amount of compensation towards loss of dependency, claimants shall further be entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards loss of parental consortium and Rs. 40,000/- towards loss of filial consortium, Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses. Appellants shall further be entitled for Rs. 40,000/- towards medical and conveyance expenses as awarded by Claims Tribunal. Deceased was admitted in hospital for a period of about 20 days, hence, I find it appropriate to award Rs. 20,000/- towards pain and sufferings.

15. Now the appellants-claimants shall be entitled for total amount of

**Rs. 10,66,800/-** [Rs.856800+ Rs.40000+ Rs.40000+ Rs.40000+ Rs.15000+ Rs.15000+ Rs.40000+ Rs.20000] instead of Rs. 5,50,000/- as awarded by Claims Tribunal. Aforementioned amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Liability to satisfy the amount of compensation would be upon Respondent 2-Insurance Company. Other conditions imposed by learned Claims Tribunal shall remain intact.

16. In view of above, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

**Sd/-**
**(Parth Prateem Sahu)**
Judge

Pawan